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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Petitioner and Respondent,

v.

RICHARD RAYGOZA,

Defendant and Appellant.

F078638

(Super. Ct. No. F18905964)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Adolfo M. Corona, Judge.

Randall Conner, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Petitioner and Respondent.

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\* Before Detjen, Acting P.J., Smith, J. and Snauffer, J.

Appellant Richard Raygoza pled no contest to unlawfully taking a vehicle with a prior (Veh. Code, § 10851, subd. (a); Pen. Code, § 666.5/count 1)<sup>1</sup> and admitted allegations that he had two prior convictions within the meaning of the “Three Strikes” law (§ 667, subds. (b)-(i)). Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On August 28, 2018, at approximately 11:25 a.m., Robert F. reported that his van was stolen from the front yard of a residence in Fresno. The following day, at approximately 9:49 p.m., Fresno police officers stopped Raygoza as he drove the stolen van. Raygoza was arrested and, after waiving his *Miranda*<sup>2</sup> rights, he told officers he had permission from the victim to drive the van.

On August 31, 2018, officers contacted the victim who advised them that although he was acquainted with Raygoza, he did not give him permission to drive the van. Additionally, on that date, the Fresno County District Attorney filed a complaint charging Raygoza with unlawfully taking a vehicle with a prior, receiving a stolen vehicle (§ 496d, subd. (a)/count 2), six prior prison term enhancements (§ 667.5, subd. (b)), and with the Three Strikes allegations he admitted.

On October 24, 2018, Raygoza entered his plea, as noted above, in exchange for the dismissal of the remaining count and allegations and a lid of eight years.

On November 26, 2018, the court denied Raygoza’s *Romero*<sup>3</sup> motion and sentenced him to a doubled mitigated term of four years.

On January 3, 2019, Raygoza filed a timely appeal.

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise indicated.

<sup>2</sup> *Miranda v. Arizona* (1969) 396 U.S. 868.

<sup>3</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

Raygoza's appellate counsel has filed a brief that summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) However, in a letter filed on June 7, 2019, Raygoza suggests the court abused its discretion in denying his *Romero* motion because the robbery convictions underlying his two strikes were 25 years old, his auto theft conviction did not involve violence, and he was sentenced to an inordinate sentence of 23 years for a 1995 conviction for possessing a small amount of marijuana in prison (§ 4573.6). Raygoza is wrong.

“[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, on its own motion, ‘in furtherance of justice’ pursuant to ... section 1385(a), or in reviewing such a ruling, the court in question must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

Raygoza had a lengthy record before he was convicted of second degree robbery (§§ 211/212.5) in 1990 and again in 1992. On December 26, 1990, he was sentenced to a two-year prison term on his 1990 robbery conviction. On October 9, 1992, Raygoza was sentenced to an eight-year prison term on his 1992 robbery conviction. On March 7, 1995, he was sentenced to 25 years to life on his conviction for possession of drugs or alcohol in prison (§ 4573.6). On April 14, 2014, he was resentenced pursuant to section 1170.126 to eight years in prison. On July 1, 2015, he was sentenced to two years in prison on his conviction for domestic violence (§ 273.5). On May 18, 2016, he was released on postrelease community supervision (PRCS). Between that date and May 30,

2018, Raygoza violated his PRCS nine times and served additional time on each violation, in addition to serving two 10-day periods of flash incarceration.

Although Raygoza's robbery convictions were temporally remote, he has not led a blame-free life after he was convicted of those offenses. While incarcerated on his 1992 robbery conviction he committed the possession of drugs in prison offense which resulted in Raygoza's release from prison in 2014, only to commit another offense which landed him back in prison. After his release in 2016 on PRCS, Raygoza served numerous periods of incarceration for violating the terms of his release. Thus, his suggestion that his robbery convictions are too remote for Three Strikes purposes is without merit because he has been incarcerated most of the time since he sustained those convictions and he continued to lead a life of crime upon his release. (Cf. *People v. Humphrey* (1997) 58 Cal.App.4th 809, 813 [20-year old felony conviction not remote given defendant's criminal recidivism].) Moreover, because of his lengthy, unabated criminal history, the court reasonably could have found the nonviolent character of his vehicle theft offense and the lengthy sentence imposed on his possession of drug in prison conviction were insufficient for Raygoza to be deemed outside of the spirit of the Three Strikes law.

Following an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

#### **DISPOSITION**

The judgment is affirmed.